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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,948	06/23/2000	Simon Furnidge	367.38669X00	8956

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

EXAMINER

TRAN, PABLO N

ART UNIT

PAPER NUMBER

2685

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/599,948

Applicant(s)

FURMIDGE, SIMON

Examiner

Pablo N. Tran

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 6 and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,397,044. Although the conflicting claims are not identical, they are not patentably distinct from each other because both discloses such common subject matters of a transmitter having a mixer comprising switching means, first input port for inputting a baseband signal, a second port for inputting a local oscillator signal, and means for switching at an even multiple of the local oscillator.

3. Claims 1-5 and 7-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,397,044 in view of Iwane (5,212,814).

Regarding claims 1-5 and 7-11, Nash et al. disclosed such similarities of a transmitter having a mixer comprising switching means, first input port for inputting a baseband signal, a second port for inputting a local oscillator signal, and means for switching at an even multiple of the local oscillator but not specifically about a means for controlling the gain of the modulator. However, such method is well known in the art, as taught by Iwane (fig. 2, col. 2/ln. 66-col. 4/ln. 56). Therefore it would have been obvious to one of ordinary skill in the art to provide such gain control of the modulator as taught by Iwane to the apparatus of Nash et al. to provide a constant output power.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Horie et al.* (5,568,098) in view of Iwane (5,212,814).

As per claims 1 and 7, *Horie et al.* disclose a transmitter for a portable radio device comprising a modulator including a switching circuit, having a first port for inputting a baseband signal and a second port for inputting a local oscillator signal to the switching circuit which provide a conductance waveform at a frequency multiple of the local oscillator signal for up-converting the baseband signal to a radio frequency modulated carrier (fig. 4-5, col. 3/ln. 1-col. 4/ln. 67).

Horie et al. do not explicitly disclose such controls the gain of the modular to control the output level of the modulator. However, such gain control method of the modulator is well known in the art, as disclosed by Iwane (fig. 2, col. 2/ln. 66-col. 4/ln. 56). Since both references disclosed such quadrature modulator, therefore it would have been obvious to one of ordinary skill in the art to provide such gain control of the modulator as taught by Iwane to the apparatus of *Horie et al.* to provide a constant output power.

As per claims 2 and 8, the modified systems of *Horie et al.* disclose a local oscillator signal drives the switching means at a multiple of its frequency (see *Horie et al.*, fig. 5/no. 17, col. 3/ln. 58-col. 4/ln. 67).

As per claims 3 and 9, the modified systems of *Horie et al.* disclose means for controlling the gain of the modulator comprises current control means (see Iwane, fig. 2, col. 3/ln. 8-9).

6. Claims 4-5 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Horie et al.* (5,568,098) in view of Iwane (5,212,814) and further in view of *Hickman* (LTPs and active double balanced mixers, vol. 99, no. 1683, pg 126-128).

As per claims 4-5 and 10-11, the modified systems of *Horie et al.* do not specifically disclosed the transmitter having two cross-connected long tail pairs of bipolar transistors. *Hickman* disclosed such cross-connected long tail pairs of bipolar transistors. Therefore, it would have been obvious to one of ordinary skill in the art to provide cross-connected long tail pairs of bipolar transistors, as discussed in *Hickman*, to the transmitter of the modified systems of *Horie et al.* to minimized out-of-band

emissions in a subsequent mixing with a carrier signal to generate a frequency modulated signal.

7. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Horie et al.* (5,568,098) in view of *Iwane* (5,212,814) and further in view of *Damgaard et al.* (6,526,265).

As per claims 6 and 12, as stated above in claim 1, the modified systems of *Horie et al.* do not explicitly disclosed the LO signal is provided at an even multiplication. However, such is well known in the art, as disclose by *Damgaard et al.* (fig. 8/no. 320, col. 11/ln. 44-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the reference frequency generator at even multiplication in order to expand the communication system application to have better flexibility or more versatility so that various reference frequency generators can be used for the FM transmitter systems.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hulbert (4,282,497) and Katisko (5,933,448)) disclose gain control in a radiotelephone communication system.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (571)272-7898.

The examiner normal hours are 9:30 -5:00 (Monday-Friday). If attempts to reach the

examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached at (571)272-7899.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

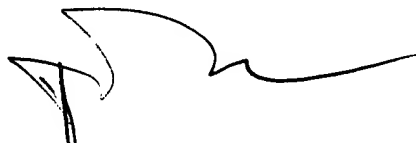
(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

PABLO N. TRAN
PRIMARY EXAMINER

August 6, 2005


AV2685